

## Department of Energy

## § 905.21

plan or report. However, the time allowed for resubmittal will not be greater than 9 months after the disapproval date, unless otherwise provided by applicable contract language.

### **§ 905.20 When are customers in non-compliance with the regulations in this subpart, and how does Western ensure compliance?**

(a) *Good faith effort to comply.* If it appears that a customer's activities may be inconsistent with the applicable IRP, small customer plan, minimum investment report or EE/RE report, Western will notify the customer and offer the customer 30 days to provide evidence of its good faith effort to comply. If the customer does not correct the specified deficiency or submit such evidence, or if Western finds, after receiving information from the customer, that a good faith effort has not been made, Western will impose a penalty.

(b) *Penalties for noncompliance.* Western will impose a penalty on long-term firm power customers for failing to submit or resubmit an acceptable IRP and action plan, small customer plan, minimum investment report or EE/RE report as required by this subpart. Western will also impose a penalty when the customer's activities are not consistent with the applicable plan or report unless Western finds that a good faith effort has been made to comply with the approved plan or report.

(c) *Written notification of penalty.* Western will provide written notice of a penalty to the customer, and to the MBA or IRP cooperative when applicable. The notice will specify the reasons for the penalty.

(d) *Penalty options.* (1) Beginning with the first full billing period following the notice specified in paragraph (c) of this section, Western will impose a surcharge of 10 percent of the monthly power charges until the deficiency specified in the notice is cured, or until 12 months pass. However, Western will not immediately impose a penalty if the customer or its MBA or IRP cooperative requests reconsideration by filing a written appeal under § 905.21.

(2) The surcharge increases to 20 percent for the second 12 months and to 30

percent per year thereafter until the deficiency is cured.

(3) After the first 12 months of the surcharge and instead of imposing any further surcharge, Western may impose a penalty that would reduce the resource delivered under a customer's long-term firm power contract(s) by 10 percent. Western may impose this resource reduction either:

(i) When it appears to be more effective to ensure customer compliance, or  
(ii) When such reduction may be more cost-effective for Western.

(4) The penalty provisions in existing contracts will continue to be in effect and administered and enforced according to applicable contract provisions.

(e) *Assessing and ceasing penalties.* Western will assess the surcharge on the total charges for all power obtained by a customer from Western and will not be limited to surcharges on only firm power sales. When a customer resolves the deficiencies, Western will cease imposing the penalty, beginning with the first full billing period after compliance is achieved.

(f) *Penalties on MBAs and IRP cooperatives.* In situations involving a plan or report submitted by an MBA on behalf of its members where a single member does not comply, Western will impose a penalty upon the MBA on a pro rata basis in proportion to that member's share of the total MBA's power received from Western. In situations involving noncompliance by a participant of an IRP cooperative, Western will impose any applicable penalty directly upon that participant if it has a firm power contract with Western. If the IRP cooperative participant does not have a firm power contract with Western, then Western will impose a penalty upon the participant's MBA on a pro rata basis in proportion to that participant's share of the total MBA's power received from Western.

### **§ 905.21 What is the administrative appeal process?**

(a) *Filing written appeals with Western.* If a customer disagrees with Western's decision on the acceptability of its IRP, small customer plan, minimum investment report or EE/RE report submittal, its compliance with an approved plan or report, or any other